IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

Crl.MC.No. 2921 of 2006()

AGAINST THE ORDER DATED 18/08/2006 IN ORDER IN
CMP.3803/2006 IN C.C.NO.181/03
JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI

.....

PETITIONER: 1ST ACCUSED:

NEBU JOHN, S/O. JOHN VARGHESE,
T.C.26/852, THAIKKADU,
THIRUVANANTHAPURAM.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.RENJITH B.MARAR

RESPONDENT:

THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2921 of 2006

Dated this the 5th day of March 2007

O R D E R

The petitioner is the first accused in a prosecution interalia under Sections 353, 511 of 324 read with 149 I.P.C and Section 3(2)(e) of PDPP Act. The petitioner was employed as a Doctor at the Primary Heath Centre at Vechoochira. The Director of Health Services had passed an order suspending the petitioner from service. A team of officials of the Public Health Department had allegedly come to the Primary Health Centre at Vechoochira to effect service of an order of suspension on the petitioner. They were allegedly not permitted to perform their official duty. Eleven accused persons including the petitioner had allegedly wrongfully restrained the victims in prosecution of the common object of the unlawful assembly of which they were allegedly members. Stones were thrown and damage was caused to the vehicles belonging to the police as also the Public Health Department resulting in a loss of Rs.1,000/- to the State. Crime was registered, investigation was conducted and final report was filed against all the eleven accused persons. Thereafter further

investigation was ordered under Section 173(8) Cr.P.C and the Deputy Superintendent of Police of the Crime Branch CID filed a further report under Section 173(8) Cr.P.C virtually confirming the allegations raised earlier. Though an allegation was raised initially that the offence under Section 324 and 332 were committed, the further report indicated that only the offence under Section 324 read with 511 I.P.C alone have been made out.

2. Cognizance was taken. Proceedings against the accused persons was continuing. At that stage, Government of Kerala informed the learned Public Prosecutor that the Government have no objection to withdraw the prosecution with the leave of the court. Accordingly, the learned Public Prosecutor filed an application as CMP No.3803/2006 under Section 321 Cr.P.C to withdraw from the prosecution.

3. No one raised any objection against the proposed withdrawal under Section 321 Cr.P.C. But the learned Magistrate, by the impugned order, rejected the prayer for leave for withdrawal under Section 321 Cr.P.C. The relevant discussion appears in the following paragraph (not numbered in

the impugned order).

> "On a perusal of the case records and the petition filed by the learned APP and after hearing both sides, this court finds that the learned APP has not applied his mind properly before filing the application u/s 321 Cr.P.C. The submission of the learned APP that the government officials are the aggrieved in this case and the government has decided to withdraw the case in the interest of justice is unacceptable. In a case of this nature the court has to look into the social ramification of the offence and its impact upon the society, if permission to withdraw the case is granted. I am afraid that such a permission might set a bad precedent and wrong signal to the society. The perpetrators of the offences causing huge expenditure to the state for conducting investigations and who caused damage to the public property cannot be allowed to go scotfree without evaluating the evidence. The learned APP appears to have gone wrong in arriving at a conclusion that the trial would badly affect the present peace and public tranquility in the locality and the petition is in the interest of justice. It is the duty of the court to see in the interest of justice that the offenders who caused damage to the public property and caused great inconvenience and expenditure to the state due to their criminal acts brought before the law and dealt as per law. The gravity of the offence and its social impact do not permit this court to allow this application. It is therefore dismissed."

4. The learned counsel for the petitioner contends that the learned Magistrate has erred grossly while considering the exercise of jurisdiction to grant leave for withdrawal under

Section 321 Cr.P.C. The learned Magistrate must have alertly taken note of the fact that it is the executive discretion of the learned Public Prosecutor which he exercises when he makes an application for leave to withdraw from the prosecution. The learned Magistrate must have alertly noted that he does not sit an appeal over such decision of the learned Public Prosecutor. A court considering the prayer for grant of leave must alertly consider the nature, quality and contours of the jurisdiction under Section 321 Cr.P.C. It would be an error of the gross variety to assume the mantle of an appellate court over the decision of the learned Public Prosecutor. Various inputs may prompt the learned Public Prosecutor to take a decision to withdraw from the prosecution. Is the decision arrived at bonafide? Is the decision one that caters to the interests of justice? These are the crucial question that the court has to consider and the learned counsel for the petitioner submits that the court erred grossly in not applying its mind correctly to the facts and circumstances of the case. The learned counsel submits that the principles reiterated in the decision in Rev.Fr.Dr.M.D.Thomas v. State of Kerala [2006(3) KLJ 479 have

not been followed by the learned Magistrate.

5. No person has raised any objection against the prayer for leave to withdraw from the prosecution made by the learned Public Prosecutor. The learned Public Prosecutor has obtained the requisite intimation from the Government that the Government have no objection against an appropriate decision being taken in the matter. The learned Public Prosecutor, in the petition submitted by him, has very clearly stated that he had applied his mind to all the relevant inputs. The crux of the allegation is that officials who want to serve a notice of suspension to a Doctor working in the local Primary Health Centre were obstructed by the people of the locality from effecting service of the order of suspension. No person have suffered injuries. The allegation is that the State suffered loss to the tune of Rs.1,000/-. An anxious perusal of the circumstances of the case indicates the probability that a righteous indignation may have prompted the people of the locality to raise their voice of protest against the suspension of the petitioner. At any rate, having considered all the relevant inputs, including the impugned order passed by the learned Magistrate, I am of the

opinion that there are no circumstances which could have persuaded the learned Magistrate to refuse grant of the requisite leave in the facts and circumstances of this case. Did the Prosecutor act as a Minister of Justice and in aid of justice while making the application for withdrawal? The answer to this crucial question must, according to me, only have been in favour of the Prosecutor and the accused persons in the peculiar facts and circumstances of this case. I am of the opinion that the learned Magistrate had unjustly withheld the prayer for leave for withdrawal. Consequently, I am satisfied that the decision deserves to be set aside invoking the powers under Section 482 Cr.P.C.

6. In the result, this Criminal Miscellaneous Case is allowed. CMP.No.3803/2006 shall stand allowed. Consequently, proceedings in CC No.181/03 against the petitioner and the other co-accused shall stand withdrawn. Accused shall consequently be entitled to be acquitted.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006